



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Design Data Corporation--Reconsideration
File: B-223982.3
Date: November 6, 1986

DIGEST

1. Dismissal of protest as untimely is affirmed where record establishes that protest was filed more than 10 working days after basis for it was known.
2. Protest based entirely on information received pursuant to Freedom of Information Act request or learned during a debriefing will be considered timely if filed within 10 working days after the protester's receipt of the information.

DECISION

Design Data Systems (Design) requests that we reconsider our September 16, 1986, dismissal of its protest, filed with our Office on September 11, as untimely. We affirm our dismissal.

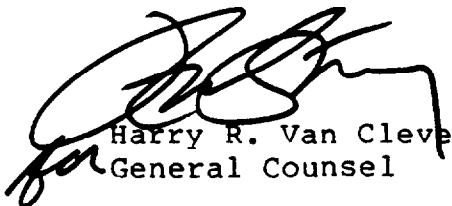
Design's protest concerned request for proposals (RFP) No. MDA903-86-R-0019, which was issued by the Department of the Army to procure an automated food service system. Design responded to the RFP, and took part in oral and written discussions on June 4 and June 16. On August 6, the firm received a letter notifying it that it was no longer considered in the competitive range or eligible to participate further in the procurement. Design then protested to our Office that the Army violated Federal Acquisition Regulation (FAR), 48 C.F.R. § 15-1001(b) (1985), because the agency failed to provide Design with the reasons the proposal was judged unacceptable. We dismissed the protest as untimely because it was not filed within 10 working days after Design knew the basis for its protest, that is, the date Design received the notice that its proposal was not within the competitive range with no explanation why the proposal was unacceptable. See 4 C.F.R. § 21.2(a)(2) (1986).

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In its request for reconsideration, Design reiterates that the Army's letter failed to provide Design with the reasons the proposal was rejected. Design alleges that it called the contracting officer and the small business representative for the information but was told that the information would be provided after award at a debriefing. The firm then filed a Freedom of Information Act (FOIA) request, but the Army has not yet responded to it. Design reasons that the protest thus should not have been dismissed as untimely because the delay in filing was caused by the Army's refusal to provide Design with needed information. Design further argues that its proposal met or exceeded each requirement of the RFP, but admits that at this time it cannot provide details for this protest basis because the Army still has not explained why the proposal was rejected.

Insofar as Design requests that we reconsider our decision to dismiss its protest of the Army's failure to explain why the firm's proposal was unacceptable, Design's continued pursuit of the matter with the Army did not extend the time for protesting to our Office. Humanoid Systems--Request for Reconsideration, B-219607.2, Aug. 23, 1985, 85-2 C.P.D. ¶ 223. Since Design knew the protest basis on August 6, the September 11 filing was outside the prescribed time limit. We therefore affirm the dismissal.

We point out, however, that as to the information Design has requested under the FOIA and the firm's future debriefing, a protest based entirely upon materials received pursuant to a FOIA request or on specific grounds learned during a debriefing will be considered timely if filed within 10 working days of the protester's receipt of the information. Marathon LeTourneau Co.--Reconsideration, B-221234.2, Jan. 9, 1986, 86-1 C.P.D. ¶ 24; Intelcom Educational Services, Inc., B-220192.2, Jan. 24, 1986, 86-1 C.P.D. ¶ 83. Accordingly, Design may refile its protest at a later date if it obtains information which leads the firm to believe that its proposal was improperly rejected.


Harry R. Van Cleave
General Counsel